



DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice: 11929]

International Traffic in Arms Regulations (ITAR): Notification of Temporary Suspension of a Regulatory Provision Related to Certain Capacitors Described on the U.S. Munitions List

ACTION: Temporary suspension.

SUMMARY: The Department of State (the Department) is informing the public that on November 21, 2022, the Deputy Assistant Secretary of State for Defense Trade Controls temporarily suspended for a period of six (6) months the applicability of regulations for certain capacitors described in the U.S. Munitions List (USML) Category XI that have a voltage rating of one hundred twenty-five volts (125 V) or less.

DATES: This temporary suspension went into effect on November 21, 2022 and will expire on May 22, 2023 or when terminated by the Department, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Weil, Office of Defense Trade Controls Policy, Department of State, telephone (202) 571-7051; e-mail

DDTCPublicComments@state.gov ATTN: Temporary Suspension Related to Certain Capacitors

SUPPLEMENTARY INFORMATION: On July 1, 2014, the Department published a final rule revising Category XI of the USML (79 FR 37536). That final rule added USML Category XI(c)(5) to describe high-energy storage capacitors with a repetition rate of 6 discharges or more per minute and full energy life greater than or equal to 10,000 discharges, at greater than 0.2 Amps per Joule peak current, that have any of the following:

- Volumetric energy density greater than or equal to 1.5 J/cc or

- Mass energy density greater than or equal to 1.3 kJ/kg.

The Department, in consultation with the Departments of Defense and Commerce, and other U.S. Government agencies, assessed in the rulemaking that the discharge rate and energy life criteria were sufficient to differentiate those capacitors warranting ITAR control from those that were in normal commercial use at the time of the rulemaking.

It has come to the Department's attention that certain low-voltage capacitors with foreign availability that are described in USML Category XI(c)(5) are now extensively integrated into commercial applications, such as Wi-Fi routers and civil aviation aircraft transponders. Pursuant to ITAR § 120.11(c), defense articles described on the USML are controlled and remain subject to the ITAR following integration into any item not described on the USML, unless specifically provided otherwise. Thus, a license or other approval is required prior to any export, reexport, retransfer, or temporary import of an item containing such capacitors.

Section 126.2 of the ITAR provides that the Deputy Assistant Secretary for Defense Trade Controls may order the temporary suspension or modification of any or all provisions of the ITAR when in the interest of the security and foreign policy of the United States.

The Department assessed that it is in the security and foreign policy interests of the United States to facilitate commercial uses of certain capacitors when integrated into any item not described on the USML (for example, certain items used in energy exploration or in commercial aircraft used for global travel and commerce). Accordingly, on November 21, 2022, pursuant to ITAR § 126.2, and the Department's administration of the Arms Export Control Act (AECA) as a foreign affairs function as stated in ITAR § 120.20, the Deputy Assistant Secretary of State for Defense Trade Controls ordered the temporary suspension of ITAR § 120.11(c) with respect to capacitors described in USML Category XI(c)(5) that have a voltage rating of one hundred twenty-five volts (125 V) or

less and have been integrated into, and included as an integral part of, an item not described on the USML. Such articles are licensed by the Department of Commerce when integrated into, and included as an integral part of, items subject to the EAR. This temporary suspension of ITAR § 120.11(c), as described above, is valid for a period of six months until May 21, 2023, or when terminated by notice, whichever occurs first.

Capacitors described in USML Category XI(c)(5) remain subject to the controls of the ITAR in all other circumstances, including as stand-alone articles. The export, reexport, retransfer, or temporary import of technical data and defense services directly related to all defense articles described in USML Category XI(c)(5) remain subject to the ITAR.

Any violation of the ITAR, including any violation of the terms and conditions of any export license issued by the Department of State prior to the temporary suspension announced herein, remains a violation of the AECA. The public is reminded that the Department of State strongly encourages industry to disclose, pursuant to ITAR § 127.12, unauthorized exports, reexports, retransfers, or temporary imports of defense articles, including the subject capacitors, that occurred prior to the temporary suspension announced herein.

(Authority: 22 CFR 126.2; 22 U.S.C. 2778)

Michael F. Miller,
Deputy Assistant Secretary,
Defense Trade Controls,
Department of State.